

a. §103(a): Griffin in view of Burns

Claims 1-9 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,335,730 (hereinafter "Griffin") in view of U.S. Patent No. 5,458,584 (hereinafter "Burns").

The Examiner stated that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide to the invention of Griffin the petition member taught by Burns in order to reduce the volume in the housing.

Applicant respectfully traverses the rejection and submits that a prima facie case of obviousness has not been established and that Claims 1-9 would not have been obvious over Griffin in view of Burns.

Griffin teaches a urine specimen collector assembly which includes a specimen tube in a funnel-shaped member. The funnel-shaped member is open at both ends. The tube has a closed rounded reservoir tip at one end. Griffin is silent in teaching a solid partition within the housing between the first and second ends. (See Column 4, lines 21-57).

Burns teaches a collection assembly comprising a container with an integral lip. The lower portion of the tube comprises a closed bottom end and an annular skirt extending from the closed bottom end to a bottom edge. The annular skirt provides a means for allowing the container to be placed upright on a flat surface. (See Column 3, lines 48-53). Burns is silent in teaching the second end being configured into at least a partial arcuate shape to provide the tube with at least a partially rounded end.

The Applicant, on the other hand, claims a collection container assembly comprising an elongate tubular housing, a solid partition positioned within the housing between the first end and second ends, and where the second end is reconfigured into at least a partially arcuate shape to provide the specimen collection tube with at least a partially rounded end. The Applicant submits that the rounded open bottom end provides the assembly with a curved

arcuate, or at least a partially rounded end. The end provides for better compatibility with clinical equipment and analytical or diagnostic test equipment or instruments which are designed to accommodate conventional standard size round bottom blood collection tubes. Thus, the container of the present invention allows lower interior volume and a smaller biological fluid specimen which can be used in testing equipment that accommodates conventional standard sized round bottom blood collection tubes. (See page 9, lines 7-16).

Clearly, as argued above, there are substantial structural and functional differences between the teachings of Griffin in view of Burns and the Applicant's claimed invention. Griffin does not teach or suggest a solid partition positioned within the housing between the first and second ends. In fact, Griffin teaches against such a structure by having an open end 36 for elongated spout 26 as shown in Figures 1 and 3. If Griffin were to have a solid partition as the Applicant claims, the Griffin invention would not function. Burns does not teach or suggest a second end being reconfigured into at least a partially arcuate shape to provide the specimen collection tube with at least a partially rounded end. This structure is important as the Applicants previously pointed out, in order to use testing equipment that accommodates conventional round bottom collection tubes. In fact, Burns teaches against such a rounded end by providing a bottom edge 47 and an annular skirt 37 that provides a means for allowing the container to be placed upright on a flat surface. If the end was rounded as the Applicant claims, this container would not be able to be placed upright on a flat surface. (See Column 3, lines 48-53 and Figures 1-9).

It is well settled that a rejection under §103(a) grounded on a modification of the reference cannot be sustained unless the particular modification is suggested by the prior art itself. Griffin does not teach or suggest a solid partition as the Applicant claims. Burns does not teach or suggest a rounded bottom end as the Applicant claims.

It is also well settled that for prior art references to be combined to render obvious the subsequent invention under §103 there must be something in the prior art as a whole which suggests the desirability, and thus, the obviousness, of making the combination. The teachings of the references can be combined only if there is some suggestion or incentive in the prior art to do so. Hindsight is strictly forbidden. There is no incentive in Griffin or Burns to provide the invention of Griffin with the petition member as taught by Burns. In fact, Griffin teaches away from such a configuration by requiring the funnel to have an open end and not a solid partition.

Applicant respectfully submits that after careful review of the references cited by the Examiner, Claims 1-9 would not have been obvious over the references cited. Therefore, the Applicant submits that a prima facie case of obviousness has not been made.

The Applicant believes that the above-referenced application is in form for allowance, and this allowance is respectfully requested.

Respectfully submitted,



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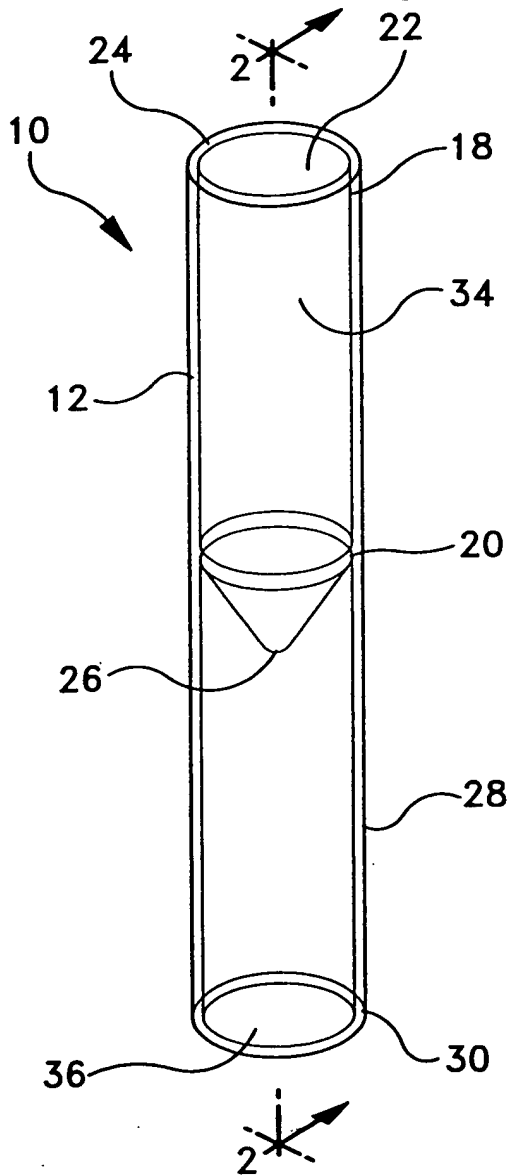
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FIG-1 PRIOR ARTFIG-2 PRIOR ART